Findings and Fruits of Investigation

Major Forms of Maladministration

6.1 Most complaints concluded in the reporting period were against the organisations for "error, wrong decision or advice" (31.2%), followed by "failure to follow procedures or delay" (10.2%). In other words, public perception sees these as the topmost common forms of maladministration. However, complaints found to be substantiated or partially substantiated after full investigation[1] were "failure to follow procedures or delay" and "negligence, omission". Details are tabulated below :

Fig. 6.1

Nature of Allegation / Maladministration Identified	% Among All Concluded Cases[@]	% Among All Acts of Maladministration Substantiated[#]
Error, wrong decision or advice	31.20%	14.90%
Failure to follow procedures, delay	10.20%	21.30%
Lack of response to complaint	6.90%	2.10%
Staff attitude	6.40%	6.40%
Negligence, omissions	6.00%	21.30%
Disparity in treatment, unfairness	5.70%	8.51%

[@] There were a total of 4,661 concluded case in 2003/04, including cases outside jurisdiction, restricted or concluded after preliminary inquiry, mediation or full investigation (see Table 1).

[#] There were 47 allegations substantiated after full investigation in 2003/04.

The Ombudsman's Recommendations

6.2 The Ombudsman Ordinance requires The Ombudsman after a full investigation to report findings, to give opinions with reasons and to make recommendations. My recommendations fall broadly into two categories, namely :

(a) Redress of grievances –
to right specific wrongs, including remedial measures, immediate and longer-term;

(b) Administrative improvement –
to improve the administration of an organisation in general or in specific areas such as changes to systems, procedures and practices for removing administrative errors, loopholes or deficiencies.

I respect the relevant authorities for formulation of policies but I do from time to time comment on policies: to focus on outdated aspects or to generate public debate.

6.3 A substantial number of complaints are directed against the actions or attitude of individual officers. To enhance the quality of public administration, recommendations from our investigations are generally preventive rather than punitive in nature. Accordingly, we rarely propose disciplinary action against individual officers as we believe this is a matter for the heads of the organisations. In short, we seek to improve rather than to disapprove, to comment constructively and not to carp critically.

1 As opposed to preliminary inquiries, which include INCH and RAC, and mediation.

6.4 If an investigation report is, in my opinion, not adequately acted upon by the head of the organisation concerned, The Ombudsman Ordinance provides that I may submit my report and recommendations together with any further observations to the Chief Executive. I may also make a further report to the Chief Executive if I consider a serious irregularity or injustice to have taken place and, within one month or such longer period as the Chief Executive may determine, a copy of such further report shall be laid before the Legislative Council.

Government Minute on Implementation

6.5 Since 1995, the Administration has been submitting a Government Minute to the Legislative Council within three months after the tabling of The Ombudsman's Annual Report. This summarises the follow-up actions taken by Government departments and statutory organisations to implement The Ombudsman's recommendations. It is a measure of the seriousness with which the Administration views the role of The Ombudsman in promoting open and fair, responsive and responsible government.

Implementation of Recommendations

6.6 Properly conducted investigations and carefully considered recommendations are key to our work processes. An indicator of our achievement is the number of recommendations for improvement made by me and accepted for implementation by the organisations. In the 2003/04 reporting year, my Office completed 284 full investigations and five direct investigations, with 121 and 88 recommendations respectively or a total of 209 together. 197 (or 94.3%) of them have been accepted by the organisations concerned with 9 (or 4.3%) were still under consideration by them. Each recommendation, when implemented, results in improvement to public administration and better services to the community.

Fig. 6.2

Number of Recommendations

Year	From Complaint Investigation	From Direct Investigation	Total
1999/2000	108	30	138
2000/01	131	59	190
2001/02 (10 1/2 months)	166	70	236
2002/03	173	72	245
2003/04	121	88	209

6.7 In the reporting period, we concluded 1,834 cases after preliminary inquiries, including 203 cases by INCH and 1,631 by RAC, with a total of 223 suggestions to the organisations concerned for remedial actions or administrative improvement. It is noteworthy that oftentimes, organisations would conduct their own internal audit and even introduce improvement measures in the course of our investigation. We welcome and appreciate such "headstart" by the organisations and see ourselves as carrying catalytic influence. In this light, we pay tribute to complainants for raising their cases and thus contributing to better quality services.

Enhancement of Quality Administration

6.8 Implementation of our recommendations and suggestions for administrative improvement has helped to enhance public administration in a number of areas, as shown in **Fig. 6.3** below:

Fig. 6.3

Examples of Improved Public Administration

Area of Improvement	Example
(1) Clear guidelines for clarity, consistency and efficiency in operation	Housing Department (HD) investigated a case of forged document to apply for rental housing. Among other things, the subject officer made a wrong determination of the date of discovery of the offence. As a result, prosecution action turned out to be time-barred. HD had arrangements for supervisors to confirm Statutory Time Barred Dates. This counter-check did not function because the subject officer was doubling up his supervisor's post when handling the case. Following our recommendation HD issued clear guidelines to ensure similar mistakes would not recur.
(2) Better arrangement for inter-organisational coordination	A flat owner received from Buildings Department (BD), separately over nine months, demotion orders and advisory letters in respect of three illegal structures. He felt aggrieved by the time difference of such orders and letters, which caused him extra time and costs in compliance. Our investigation found that the orders and letters were issued on different types of illegal structures by three different sections within BD. While two units coordinated prior to action, inadequate coordination was observed in respect of the third unit. On our recommendation, BD issued clear internal guidelines to ensure better synchronization in issuing orders and advisory letters to the same owner.

Area of Improvement	Example
(3) Measures adopted for better public enquiry / complaint handling	Complainant was dissatisfied with the service of an Internet Service Provider (ISP) and complained to the Office of Telecommunication Authority (OFTA). OFTA inquired into the complaint but expressed that it would only investigate cases of non-compliance with the Telecommunication Ordinance. Complainant considered OFTA not having properly taken up its regulatory duties. We found OFTA to have properly followed up the complaint but had not given clear guidelines that it would not take up complaints that concern only contracts between ISPs and their customers. Following our recommendation, OFTA issued clear guidelines both for internal use and public reference.
(4) Training and guidelines for staff	On HD advice, owners of a Home Ownership Scheme Scheme decided to form themselves into owners' corporation (OC). The development's different blocks had been constructed at different times and so had different deeds of mutual covenant. Consequently, the owners had to form two owners'corporations. For this, the original estate management fund had to be split. HD advised that this could be done within three months after the formation of the two OCs. However, this could not be realized because HD staff had under-estimated the complexity of splitting the accounts. For future improvement, on our recommendation, HD provided clear guidelines and training for staff.
(5) Measures for better services	A couple wanted to report suspected abuse of Comprehensive Social Security Assistance (CSSA) to a Field Unit (FU) of Social Welfare Department (SWD), but were advised to report the case to SWD's Fraud Investigation Team (FIT). Although our investigation found their allegation that the FU was unwilling to receive their report unsubstantiated, we did find a lack of communication between FU and FIT. There was also no clear advice to the public

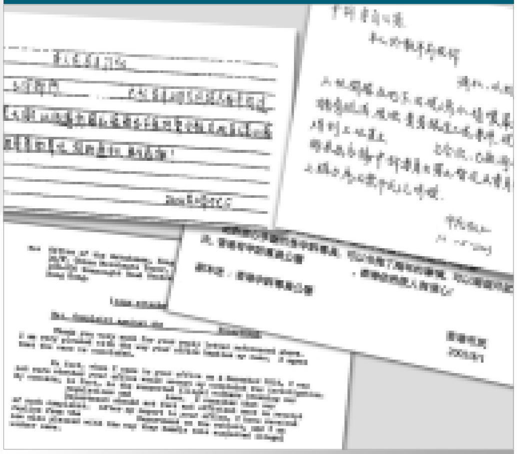
Area of Improvement	Example
	that after they had reported to FU, they need not report again to FIT, or vice versa. On our recommendation, SWD introduced a one-stop service for receiving CSSA abuse reports and provided information to the public about this.
(6) More and clearer information to the public	On a Tuesday when the Executive Council (ExCo) was in session, the complainant went to the Central Government Offices (CGO) to petition but was stopped by the staff there on the ground of no prior application. She felt aggrieved, as petitions by individuals did not need prior application. We found that Government's published Guidance Notes on the subject mentioned only the existence of special arrangements for petitions on ExCo meeting days but gave no details. Also, it was unclear whether the arrangements were applicable also to individuals. On our suggestion, the Chief Secretary for Administration's Office revised the Guidance Notes to include details of such special arrangements and make it clear that they apply to both groups and individuals.

Acknowledgement of Our Services

6.9 From time to time, we receive letters of appreciation from complainants and organisations, e.g. on the thoroughness and impartiality of our investigation. We value such acknowledgement as encouragement for our further improvement. We also welcome any constructive comment on our services.

Fig. 6.4

Extracts from Letters of Appreciation



Findings and Fruits of Investigation

Positive Complaint Culture

6.10 Unquestionably, complaints originate from grievance or dissatisfaction but this does not render complaints necessarily a negative product. A complaint made in good faith is due exercise of a citizen's rights. A valid complaint is a useful reminder to Government to re-visit policies, procedures and practices with The Ombudsman as referee. Complaints are opportunities to review and revamp, redress and reform. Public administration could and should evolve, develop and improve.

6.11 Over the years, we have been promoting a positive complaint culture with both the public and the organisations in Schedule 1 to the Ordinance. Our activities for public awareness and education are described in **Chapter 7**.